IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 85 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AFTABKHAN JABBARKHAN PATHAN

Versus

PRESIDING OFFICER AND ASSISTANT POLICE COMMISSIONER

Appearance:

MS BANNA S DUTTA for Petitioner

MS HANSA PUNANI for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/04/2002

ORAL JUDGEMENT

Rule. Ms. Hansa Punani, learned APP is directed to waive service.

2. The present petition is filed by the petitioner against the order dtd.10/12/2001 passed by the respondent No.3 in appeal confirming the externment order dtd.31/8/2001 passed by the respondent NO.2.

3. Heard the learned counsel for the respective parties.

4. Ms.Banna Datta, learned counsel for the petitioner has submitted that the externing authority has

issued show cause notice to the petitioner on 30/6/2001 asking the petitioner to show cause why the petitioner should not be externed. The learned counsel for the petitioner has further submitted that thereafter, the externing authority has passed an order on 31/8/2001 externing the petitioner from the jurisdiction of Police Commissioner, Ahmedabad City as well as from contiguous districts namely Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of two years, illegally and without any cogent and convincing evidence. The learned counsel for the petitioner has submitted that the externing authority has passed the impugned externment order externing the petitioner from contiguous districts, without any materials and the externing authority has not given reasons for externing the petitioner from the contiguous districts. He has further stated that it is true that the externing authority has power to extern the petitioner from contiguous districts, but the powers are required to be used judiciously. Learned counsel for the petitioner has drawn my attention to the show cause notice as well as the impugned order and argued that there is no evidence worth the name for externing the petitioner from contiguous districts. The learned counsel for the petitioenr has submitted that the alleged offences are alleged to have committed in Ahmedabad and hence the same are restricted to a particular City and therefore, there is no reason for externing the petitioner district and from contiguous districts. In support of his arguments, learned counsel for the petitioner has relied upon the decision of this Court rendered in the case of MUSTUFAMIYA PIRSAHEDMIYA SAIYED VS. STATE OF GUJARAT AND ANR. reported in 1999(1) GLH page 913. This court, in para 8 of the said judgement, has held as under;-

"8. Another non-application of mind in the show cause notice is exposed from the concluding portion where the externing authority has mentioned that the petitioner should be externed from districts of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Vadodara. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner were confined only to the district of Ahmedabad Rural."

Further, this Court in para 17 of the said judgement, has held as under :-

"17. The externing authority under Section 56

> of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is proposed for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal vs. District Magistrate, Rajkot and another, reported in 3 G.L.R. 807 can be referred on this point."

5. Having heard the arguments of the learned counsel for the respective parties and considering the facts of the present case and ratio laid down by this court in the aforesaid judgement, relied upon by the learned counsel for the petitioner, it is clear that there is no indication in the order of the existence of the circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district, which shows non-application of mind on the part of the detaining authority, which vitiates the impugned order and hence the same cannot be sustained in the eye of law and requires to be quashed and set aside.

6. For the foregoing reasons, the petition is allowed. The impugend externment order dated 10/12/2001 passed by the respondent No.3 in appeal, confirming the externment order dtd.31/8/2001 passed by the respondent No.2 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(R.P. DHOLAKIA, J.)

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